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**By ECF & Facsimile (718) 613-2546**

Honorable Nicholas G. Garaufis  
United States District Judge  
Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v Vincent Basciano,  
05Cr0060 (NGG)

Dear Judge Garaufis:

This letter is written to bring to the Court's another recent decision of the Second Circuit, United States v. Brown, Docket No. 09-4991-cr (2d Cir. January 5, 2011).

Brown reconfirms the Second Circuit's commitment to the "categorical approach" for assessing whether a prior conviction is a "violent felony" for purposes of a sentencing enhancement. This case lends further support to defendant's motion to preclude the government from relying on the defendant's 1987 conviction as a statutory aggravator and using it to prove defendant's eligibility for the death penalty in any potential penalty phase of trial. We argued that Basciano's convictions for weapon possession in 1987 were not for an offense involving the use, attempted use or threatened use of a firearm; the convictions were for simple possession. Under the categorical approach, they may not serve to make him eligible for the death penalty.

Defendant's motion to strike the "Previous Conviction of Violent Felony Involving Firearm" identified in the indictment's Notice of Special Findings in ¶74.d and The Notice of Intent to Seek the Death Penalty ¶B.1, was one of the pre-trial motions filed by defendant in February 2009, and argued on June 26, 2009, but not yet decided.

Respectfully submitted,

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/s/  
Richard Jasper, Esq.

cc: All counsel (By ECF)